

III. REMARKS

Claims 17-22 and 30 are pending in this application. Claims 17-22 and 30 stand as rejected. The Examiner's objections and rejections are addressed below in substantially the same order as in the office action. The Applicants request reconsideration of the pending claims in view of the remarks set forth below.

Maintained Rejections/Objections

Claim Rejections - 35 U.S.C. § 112

The Examiner has maintained the rejection of Claims 17-22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner objected to the use of the term "Strongly Acidic." The Applicants have amended Claims 17 and 30 to incorporate the content of Claim 18, thus putting the claims into condition for allowance under §112. The Applicants assert that this amendment does not introduce new matter nor matter that would require a further search. Entrance of the amendment and withdrawal of the §112 rejection is respectfully requested.

Claim Rejections - 35 USC § 103

Claims 17-22 and 30 stand as rejected under 35 U.S.C. §103(a) as being unpatentable over Yeung et al. (US Patent 5,721,313) in view of Fillipo et al. (US Patent 5,169,540). The Examiner states that Yeung discloses polymer emulsions formed by inverse polymerization reactions and that the polymer is a reaction product of:

- (a) an ethylenically unsaturated carboxylate having between about 3 and about 6 carbon atoms;
- (b) an ethylenically unsaturated monomer which is nonionic in nature;
- (c) an ethylenically unsaturated monomer containing one or more sulfonate or sulfoalkyl groups;
- (d) an ethylenically unsaturated monomer having surface active properties; and
- (e) a crosslinking agent is provided; wherein:
 - (a) can be acrylic acid or methacrylic acid in the amount of 50-90% of the polymer solids;
 - (c) can be 2-acrylamido-2-methylpropanesulfonic acid (AMPS) in the amount of 1-20%, and
 - (e) can be methylenebisacrylamide in the amount of 0.01-5.0%.

The Examiner notes that the polymer composition can be utilized in a cosmetic composition (column 1, lines 60-64); the polymer composition typically comprises from 1-70% by weight of the final composition (column 2, lines 20-25); the emulsions are water in oil emulsions (abstract); the oil phase can comprise hydrocarbon solvents, such as mineral oils (column 4, lines 13-30); and that the examples disclose the preparation of numerous emulsions obtained with varying amounts of each component utilized. The Examiner concedes that Yeung does not disclose the use of a cationic acrylic monomer.

The Examiner cites Fillipo as disclosing the inverse emulsions comprising cationic monomers commonly copolymerized with acrylamide including acryloyloxyethyltrimethylammonium chloride and methacryloyloxyethyltrimethylammonium chloride (column 4), which are the polymers recited in the instant claims.

The Examiner concludes that based on the advantages of the components disclosed by the Yeung and Fillipo, the skilled artisan would have a reasonable expectation of success in preparing an inverse emulsion containing a cationic polymer as disclosed and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the cationic polymers of Fillipo since it is disclosed the cationic monomers which are commonly copolymerized with acrylamide including acryloyloxyethyltrimethylammonium chloride and methacryloyloxyethyltrimethylammonium chloride provide stable blends in aqueous emulsions and can be used in lower amounts than what was previously used.

The Examiner's Response to the prior Arguments

The Examiner states that the Applicant's arguments are not persuasive because the Applicant has argued that the percentage of each component is relative to the weight of the emulsion as a whole, whereas the Yeung reference discloses the percentages based on the polymeric portion of the emulsions and not the emulsions as a whole. Therefore, the percentages cannot be compared as Applicant has in the remarks filed on April 21, 2010. The Examiner has reminded the Applicants that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

New Arguments

In regard to the Examiner's comments relating to the percentages of each component, the Applicants respectfully assert that the percentage of components is relative to the emulsion as a whole as far as oil phase, aqueous phase and polymer are concerned, but not for the % of monomers that are relative to the weight of the final polymer itself. With this in mind, the Applicants respectfully request that the Examiner reconsider the arguments of the last response.

Regarding the Examiner's reminder of the need to discuss the references in combination, the Applicants refer to the differences of the Examiner's references as compared to the claim scope of the present application as illustrated in the prior action, partially reproduced here, but incorporated

by reference in their entirety (to avoid Prolixity):

Ethylenically unsaturated monomer	US 5,721,313 (Yeung)	Present Invention	US 5,169,540 (Filipo)
...carboxylate	50-90%	25-45%	no
...nonionic	5-48%	no	yes (possible)
...sulfonate or sulfoalkyl groups	1-20%	55-76%	no
...having surface active properties	0.01-5%	no	no
...cationic	no	0.1-5%	yes
Crosslinking agent	0.01-5%	0.01-1%	no
Fields of Use:			
	Specific: inks, pigments and dyes thickener (+ cosmetic, but within many other)	cosmetic	water treatment

The Examiner concedes that Yeung lacks the cationic acrylic monomer and cites Filipo for this missing element. However, it is clear that there is substantially no other commonality of Filipo and the Claims of the present application and scarcely little more with Yeung. Filipo, while a polymer, is directed to an entirely differing use. There is no motivation to one of ordinary skill in the art to apply Filipo to Yeung to produce the claimed invention. The Examiner states that the skilled artisan would have a reasonable expectation of success in preparing an inverse emulsion containing a cationic polymer of Filipo, but with such differing formulations, that would not seem to be the case. The Applicants respectfully submit that the Examiner's combination of elements from the subject references would not have been obvious to one of ordinary skill in the art and allowance of the claims as now amended is requested.

CONCLUSION

For all the foregoing reasons, Applicants now believe that the pending application is in condition for allowance and such action is hereby requested. The Commissioner is hereby authorized to charge any fees to Deposit Account No. **50-4920 (LSP-1016US)**.

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Respectfully submitted,

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